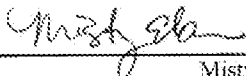


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:	Group Art Unit: 1612
Applicants: Jeffrey P. Walker, et al.	Examiner: Gollamudi S Kishore
Serial No.: 09/387,219	WSGR Reference No.: 34149-703,401
Filed: August 31, 1999	Confirmation No.: 2344
Title: <i>Drug Delivery System and Method</i>	<u>Certificate of Mailing or Transmission</u> I hereby certify that this correspondence and all marked attachments is being transmitted by facsimile on June 23, 2009 to the United States Patent and Trademark Office at (571) 273-0025. By:  Misty Elam

REQUEST FOR WITHDRAWAL OF ABANDONMENT

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This response is a request for withdrawal of the abandonment that was mailed on May 11, 2009 (Abandonment). Applicants submit that the application was held abandoned in error, and hereby request withdrawal of the Abandonment, and examination of the pending claims.

**Remarks** begin on page 2 of this paper.

**REMARKS**

In response to the Abandonment mailed May 11, 2009, Applicants respectfully submit that the application was erroneously abandoned, and request that the Abandonment be withdrawn and the application returned to a pending status.

The reason given for holding the application abandoned was that Applicants had failed to respond to an office action. However, the Applicants filed a Continued Prosecution Application (CPA) on July 31, 2001; and under CPA practice, Applicants were not required to file a response to an office action in order for the CPA to be complete. *See* MPEP § 201.06(d), 7<sup>th</sup> Ed., Rev. 1 (Feb. 2000); *see also* 37 CFR 1.53(d).<sup>1</sup> Accordingly, the reason given for holding the application abandoned was erroneous. As Applicants complied with the requirements of the CPA rule that was in force at the time that the CPA was filed, they request that the Abandonment be withdrawn and that the application be returned to a pending status.

Applicants filed a Continued Patent Application (CPA) on July 31, 2001. While there was considerable correspondence and telephone communication between the Office and Applicants' counsel regarding filing fees, there was never any allegation that the conditions for filing a CPA had not been met until the Abandonment was mailed on May 11, 2009. Indeed, Applicants submit that all the requirements for filing a CPA have been met, and that the application should properly be pending before the Office.

The rule governing filing of a CPA, which was in force when Applicants' filed their CPA, is 37 CFR § 1.53(d), which states in pertinent part: "A continuation ... application ... of a prior nonprovisional application may be filed as a continued prosecution application provided that:

"(i) The prior nonprovisional application is ...:

(A) Complete as defined by § 1.51(b); ... and

"(ii) The application under this paragraph is filed before the earliest of:

"(A) Payment of the issue fee...,

"(B) Abandonment of the prior application; or

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<sup>1</sup> For the Examiner's convenience, a copy of M.P.E.P. § 201.06(d), 7<sup>th</sup> Ed., Rev. 1, which was in force on July 31, 2001, when the CPA was filed, is attached hereto as Exhibit A. The text of 37 C.F.R. § 1.53 from MPEP 7<sup>th</sup> Ed., Rev. 1, is attached as Exhibit B.

“(C) Termination of proceedings on the prior application.”

There has been no allegation made that Applicants failed to meet the requirements for a CPA under 37 CFR § 1.53(d), nor do Applicants believe any such allegation would be true. The prior application of the same serial number was complete; and the CPA was filed prior to payment of the issue fee, abandonment and/or termination of the proceedings in the prior application. Applicants note that the current version of the MPEP, which was in force when the Abandonment was mailed, states, “CPAs filed prior to July 14, 2003 will continue to be processed and examined under the procedures set forth in prior 37 CFR 1.53(d).” MPEP § 201.06(d), 8<sup>th</sup> Ed., Rev. 7, 200-31 (Aug. 2006). Accordingly, failure to examine the application as a properly filed CPA under 37 CFR § 1.53(d) was improper. As Applicants have complied with the requirements for a CPA, Applicants submit that the Abandonment was erroneous and should be withdrawn. Such action is respectfully requested.

### **CONCLUSION**

In view of the remarks and amendments submitted herein, Applicants submit that the application is order for examination, and such action is earnestly solicited.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (858) 350-2312.

Respectfully submitted,

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Dated: June 23, 2009

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